

## Office of the Secretary, Interior

## § 11.36

(f) Subsurface currents either: are not expected to significantly affect the level or extent of injuries; or are reasonably uniform with depth over the water column in the area affected by the release.

[61 FR 20610, May 7, 1996]

### **§ 11.35 How does the authorized official decide whether to use type A or type B procedures?**

(a) If the authorized official determines under § 11.34 that a type A procedure is available, the authorized official must then decide whether to use that procedure or use type B procedures. The authorized official must make this decision by weighing the difficulty of collecting site-specific data against the suitability of the averaged data and simplifying assumptions in the type A procedure for the release being assessed. The authorized official may use type B procedures if they can be performed at a reasonable cost and if the increase in accuracy provided by those procedures outweighs the increase in assessment costs. Section 1, Volume I of the NRDAM/CME technical document (incorporated by reference, see § 11.18) lists the simplifying assumptions made in the NRDAM/CME. Volumes III through IV of the NRDAM/CME technical document list the data in the NRDAM/CME. Section 1, Volume I of the NRDAM/GLE technical document (incorporated by reference, see § 11.18) lists the simplifying assumptions made in the NRDAM/GLE. Volume III of the NRDAM/GLE technical document lists the data in the NRDAM/GLE.

(b) The authorized official must use type B procedures rather than a type A procedure whenever a potentially responsible party:

(1) Submits a written request for use of type B procedures along with documentation of the reasons supporting the request; and

(2) Advances all reasonable costs of using type B procedures within a time frame acceptable to the authorized official.

(c) If there is no available type A procedure, the authorized official must use type B procedures to calculate all damages.

(d) Except as provided in paragraph (b) of this section, the authorized official may change the type of procedure used in light of comments received on the Assessment Plan. [See § 11.32(e)(2) to determine if the authorized official must provide for additional public review.] However, if the authorized official decides to use type B procedures in lieu of a type A procedure, and cannot confirm exposure under § 11.37, the authorized official may not then use a type A procedure.

[61 FR 20610, May 7, 1996]

### **§ 11.36 May the authorized official use both type A and type B procedures for the same release?**

(a) The authorized official may use both a type A procedure and type B procedures for the same release if:

(1) The type B procedures are cost-effective and can be performed at a reasonable cost;

(2) There is no double recovery; and

(3) The type B procedures are used only to determine damages for injuries or compensable values that do not fall into the categories addressed by the type A procedure. [Sections 11.14(v) and 11.62 define "injury." Section 11.83(c)(1) defines "compensable value."]

(b) The type A procedures address the following categories of injury and compensable value:

(1) Direct mortality of species covered by the NRDAM/CME or NRDAM/GLE resulting from short-term exposure to the released substance. Volume IV of the NRDAM/CME technical document (incorporated by reference, see § 11.18) lists the species that the NRDAM/CME covers. Section 3, Volume III of the NRDAM/GLE technical document (incorporated by reference, see § 11.18) lists the species that the NRDAM/GLE covers;

(2) Direct loss of production of species covered by the NRDAM/CME or NRDAM/GLE resulting from short-term exposure to the released substance;

(3) Indirect mortality of species covered by the NRDAM/CME or NRDAM/GLE resulting from disruption of the food web by direct mortality or direct loss of production;

(4) Indirect loss of production of species covered by the NRDAM/CME or

## § 11.37

NRDAM/GLE resulting from disruption of the food web by direct mortality or direct loss of production;

(5) Lost assimilative capacity of water column and sediments;

(6) Lost economic rent for lost commercial harvests resulting from any closures specified by the authorized official and/or from population losses;

(7) Lost recreational harvests resulting from any closures specified by the authorized official and/or from population losses;

(8) For the type A procedure for coastal and marine environments, lost wildlife viewing, resulting from population losses, by residents of the States bordering the provinces in which the population losses occurred. [A province is one of the geographic areas delineated in Table 6.1, Volume I of the NRDAM/CME technical document.] For the type A procedure for Great Lakes environments, lost wildlife viewing, resulting from population losses, by residents of local areas bordering the provinces in which the population losses occurred. [A province is one of the geographic areas delineated in Table 8.1, Volume I of the NRDAM/GLE technical document.];

(9) Lost beach visitation due to closure; and

(10) For the type A procedure for Great Lakes environments, lost boating due to closure.

(c) If the authorized official uses both type A and type B procedures, he or she must explain in the Assessment Plan how he or she intends to prevent double recovery.

(d) When the authorized official uses type B procedures for injuries not addressed in a type A procedure, he or she must follow all of subpart E (which contains standards for determining and quantifying injury as well as determining damages), § 11.31(c) (which addresses content of the Assessment Plan), and § 11.37 (which addresses confirmation of exposure). When the authorized official uses type B procedures for compensable values that are not included in a type A procedure but that result from injuries that are addressed in the type A procedure, he or she need not follow all of subpart E, § 11.31(c), and § 11.37. Instead, the authorized official may rely on the injury predictions

## 43 CFR Subtitle A (10–1–03 Edition)

of the type A procedure and simply use the valuation methodologies authorized by § 11.83(c) to calculate compensable value. When using valuation methodologies, the authorized official must comply with § 11.84.

[61 FR 20610, May 7, 1996]

### § 11.37 Must the authorized official confirm exposure before implementing the Assessment Plan?

(a) Before including any type B methodologies in the Assessment Plan, the authorized official must confirm that at least one of the natural resources identified as potentially injured in the preassessment screen has in fact been exposed to the released substance.

(b) *Procedures.* (1) Whenever possible, exposure shall be confirmed by using existing data, such as those collected for response actions by the OSC, or other available studies or surveys of the assessment area.

(2) Where sampling has been done before the completion of the preassessment screen, chemical analyses of such samples may be performed to confirm that exposure has occurred. Such analyses shall be limited to the number and type required for confirmation of exposure.

(3) Where existing data are unavailable or insufficient to confirm exposure, one or more of the analytical methodologies provided in the Injury Determination phase may be used. The collection and analysis of new data shall be limited to that necessary to confirm exposure and shall not include testing for baseline levels or for injury, as those phrases are used in this part.

[51 FR 27725, Aug. 1, 1986. Redesignated and amended at 61 FR 20610, 20611, May 7, 1996]

### § 11.38 Assessment Plan—preliminary estimate of damages.

(a) *Requirement.* When performing a type B assessment pursuant to the requirements of subpart E of this part, the authorized official shall develop a preliminary estimate of: the anticipated costs of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources for the injured natural resources; and the compensable value, as defined in § 11.83(c) of this part, of the injured natural resources,